

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Jeffrey K. Bartels Del. ID # 2249
Kenneth William Richmond *pro hac vice* Attorneys for Plaintiffs
401 South Maryland Avenue
Wilmington, DE 19804
302-995-6211

Estate of Ronald W. Trotman
by: Charlotte A. Waite, Administratrix
pursuant to 10 Del. C. 3701
512 N. Church Street
Milford, DE 19963

Plaintiff

&

Charlotte A. Waite, Mother of Decedent and
Rolanda Trotman, Sister of Decedent as Next
of Kin pursuant to 10 Del. C. 3724
512 N. Church Street
Milford, DE 19963

Plaintiffs

v

First Correctional Medical, Inc.
6861 North Oracle
P. O. Box 69370
Tucson, Arizona 85737-0015

Defendant

and

Dr. Jose A. Aramburo, Jr., MD
13427 Worthington Road
Philadelphia, PA 19116

Defendant

and

Dr. Sitta Gombeh-Ali, MD
802 Ridge Court
Middletown, DE 19709

Defendant

and

Civil Action No.

JURY TRIAL DEMANDED

Commissioner Stanley Taylor
Delaware Department of Corrections
Administration Building
245 McKee Road
Dover, Delaware 19904
Defendant
and

Joyce Talley, Bureau Chief of
Management Services
Delaware Department of Corrections
Administration Building
245 McKee Road
Dover, Delaware 19904
Defendant

COMPLAINT
FEDERAL CLAIM

I. JURISDICTION

1. 28 U.S.C.S. 1331 Federal Question: This is a civil action brought pursuant to 42 U.S.C.S. 1983 alleging that each of the defendants named above, while acting under color of state law, in the manner described below, violated the decedent's right under U.S. Const. amend. VIII, to be free of the infliction of cruel and unusual punishment or death by the intentional denial of medical treatment.

II. PARTIES

2. Plaintiff Charlotte A. Waite is the mother of the decedent and has been appointed Administrator of the Estate of Ronald A. Trotman in Kent County, Delaware on October 5, 2005, by Thomas E. Weyant, Register of Wills, and seeks

recovery under Del. Code Ann. tit. 10, sec. 3704 (b), and Del. Code Ann. tit. 10, sec. 3701.

3. Plaintiff, Charlotte A. Waite is the mother of the decedent and Plaintiff Rolanda Trotman is the sister of the decedent and they seek recovery as Next of Kin under 10 Del. C. 3724.

4. Defendant, First Correctional Medical, Inc of 6861 N. Oracle, Tucson, Arizona, 85737 is a Corporation whose approval was required for needed hospital medical care being provided to decedent Ronald A. Trotman through its alter ego, First Correctional Medical of Delaware, LLC

5. Defendant Jose Aramburo, Jr. MD was a physician licensed in Delaware who contracted to or was under the employ of First Correctional Medical of Delaware, LLC and who provided medical care to the decedent, Ronald A. Trotman for several weeks prior to his death on March 4, 2005.

6. Defendant Sitta Gombeh-Ali, MD was a physician licensed in Delaware who provided medical care and who oversaw the infirmary at Delaware Correctional Center where medical care was provided to the decedent for several weeks prior to his death on March 4, 2005.

7. Defendant Stanley Taylor is the Commissioner of Corrections for the State of Delaware who, on or about June 17, 2002, entered into an Agreement with First Correctional Medical-Delaware, LLC, the alter-ego for Defendant First Correctional Medical for the provision of comprehensive medical care for inmates incarcerated by the Delaware Department of Corrections.

8. Defendant Joyce Talley is the Bureau Chief for the Bureau of Management Services, Delaware Department of Corrections, who was specifically charged with oversight of inmate health care services and the medical vendor contract compliance, including detailed reviews of inmate medical grievances, during the period leading up to the death of Ronald A. Trotman in the present case.

III THE FACTS

9. First Correctional Medical, Inc., is an Arizona Corporation which is a vendor of medical services that had responded to a Delaware Department of Correction Request for Proposal that had been published and circulated among Medical Care Vendors some time between January 1, 2002 and May 1, 2002. The Defendant First Correctional Medical presented its proposal and its accreditation from the National Commission on Correctional Health Care when submitting its bid to the Delaware Department of Corrections to provide Medicare Care to Inmates.

10. On or about July 1, 2002, an alter ego or subsidiary corporation known as First Correctional Medical of Delaware, LLC commenced business as the actual vendor for the medical care being provided to the Delaware Department of Corrections, while the Defendant First Correctional Medical in Arizona retained control over hospital and specialty care referrals for the decedent, Ronald A. Trotman through the several weeks that preceded his death on March 4, 2005.

11. It is believed and therefore averred that at no time prior to March 4, 2005, did the Delaware, LLC receive independent accreditation from the National Commission on Correctional Healthcare, and at all times relevant the Defendants Taylor and Talley, who were ultimately responsible for the contract performance of the medical vendor, relied upon the NCCHC accreditation of the parent company, First Correctional Medical, Inc., in Arizona.

12. On February 11, 2005, Decedent, Ronald A. Trotman was 37 years of age and had been incarcerated on a ten-year sentence for robbery since September, 1995 at Delaware Correctional Center (hereafter DCC) with SBI Number 179679.

13. On February 11, 2005, decedent had been admitted emergently to the Bayhealth Medical Center at Kent General Hospital in Dover after spending the previous several weeks in the infirmary at the Delaware Correctional Center in Smyrna.

14. At the time of admission, decedent was ill appearing, suffered acute respiratory distress, tension pneumothorax, chronic extensive muscle wasting disease, respiratory insufficiency for several months, pulmonary infiltrate, significant recent 20 lb. weight loss, pulmonary or extrapulmonary sarcoidosis, chronic large left pulmonary bullae, with oxygen at 89 or 90% of normal.

15. The decedent was immediately diagnosed with Pneumocystis Carina Pneumonia and HIV and hepatitis C and required surgical intubation and ventilation.

16. On February 16, 2005, the decedent underwent a left thoractomy, resection of his right sixth rib, a wedge resection of his right upper lobe and right lower lobe bulla, repair of a bronchopleural fistula, a right pleurectomy and intercosal nerve block, followed by a right venous catheter insertion all of which was complicated by the decedent's obvious malnourishment and cachetic condition.

17. On February 17, 2005, the decedent had to undergo a right thoractomy following a lung collapse.

18. Between February 17, 2005, and March 4, 2005, the decedent was conscious, intubated, catheterized and on a mechanical ventilator, after having suffered from months of respiratory distress.

19. Despite surgical efforts and intensive care, Ronald A. Trotman expired at 11:59 PM on March 4, 2005 of respiratory failure as a result of Pneumocystis Carinii Pneumonia and acquired immune deficiency syndrome.

20. It is believed and therefore averred, that for a period of seven months prior to being admitted to the DCC infirmary, the decedent had grown so weak that he was placed in a wheel chair.

21. After being admitted to the DCC infirmary, the decedent was prescribed only pseudoephedrine on December 20, 2004 and Amoxil on January 31, 2005. There are no other DCC medical chart entries referencing the decedent's medical or general condition from December 20, 2004 until February 11, 2005.

COUNT I
Plaintiffs v. Defendants Taylor and Talley
42 U. S. C. 1983
U. S. CONSTITUTION amend. VIII

22. Each of the foregoing paragraphs are incorporated herein as though fully set forth and in addition, Plaintiffs allege that at all times relevant hereto, Defendants Taylor and Talley were under budgetary constraints which they knew or should have known were inadequate to meet the medical needs of the inmate population they were charged with overseeing.

23. It was known to Defendants Taylor and Talley that the profit of the medical vendor, First Correctional Medical and its alter ego or subsidiary, First Correctional of Delaware, LLC was inescapably dependent on the outside hospital and specialty care that the medical vendor withheld from inmates under their charge.

24. Notwithstanding the foregoing, Defendants Taylor and Talley, as the ultimate persons responsible for contract compliance for the medical vendor at the times relevant to this complaint, intentionally neglected to investigate the actual care delivered to inmates in general in spite of knowledge that the vendor had difficulty in securing payment for care from the Medicaid Administrators in Delaware which caused severe \$ 800,000.00 arrearages in the payments to outside medical providers.

25. In addition to the foregoing, the Defendants Taylor and Talley intentionally, or with deliberate indifference (to a substantial risk of harm to the inmates needing outside medical care) withheld needed cooperation from First Correctional Medical to obtain inmate eligibility for Medicaid, all while knowing that the medical vendor was unwilling or unable to pay for outside medical services if there was any chance for Medicaid to cover the costs.

26. At no time during the period between July 1, 2002 and February 11, 2005 did Defendants Taylor and Talley implement, order or undertake any investigation to determine the level of care being provided to inmates in general by monitoring medical grievances, by review of HIV outreach programs, HIV or Hepatitis Treatment, or by requiring any explanation for the inordinate number of inmate deaths as reported by the Federal Bureau of Prisons, except for ordering an audit by the National Commission on Correctional Health Care after it appeared that outside vendor bills were going unpaid.

27. At no time during the tenure of First Correctional Medical did Defendants Taylor or Talley seek or even discuss medical budget increases from the Budget Director in the Office of the Governor, or from the legislature all while knowing that the vendor prior to First Correctional Medical could not deliver needed inmate medical care at budgeted amounts that were greater than those bid by First Correctional Medical.

28. As a result of the conscious, deliberate indifference to the serious medical needs of inmates as described, the Defendants, First Correctional Medical, Gombeh-Ali and Aramburo were enabled in the denial of urgently needed medical care in the present case which resulted in the Constitutionally forbidden pain and death of the decedent.

WHEREFORE, the Plaintiffs respectfully demand judgment against the Defendants Taylor and Talley for loss earnings the decedent would have realized and for the pain, suffering, humiliation he experienced from the needed but withheld medical treatment, and for the anguish to next of kin, together with punitive damages, costs and attorney fees as permitted.

COUNT II

Plaintiffs v. First Correctional Medical, Gombeh-ali and Aramburo
42 U.S.C. 1983 CONSTITUTION amend. VIII

29. Each of the foregoing allegations are incorporated herein as though fully set forth, and in addition it is alleged that Defendants First Correctional Medical, Sitta Gombeh-Ali and Jose Aramburo acted or failed to act knowing that harm would actually befall the decedent, Ronald A. Trotman as a direct result of withholding needed medical care despite knowledge of a substantial risk of serious harm.

30. Each of the Defendants in this Count were directly responsible for the medical care and supervision of the DCC infirmary and actually knew or clearly

should have known that the decedent suffered from a severe medical malady and required treatment and referral in time to prevent complications and death.

WHEREFORE, the Plaintiffs respectfully demand judgment against the Defendants First Correctional Medical, Gombeh-Ali and Aramburo, Jr. for loss earnings the decedent would have realized and for the pain, suffering, humiliation he experienced from the needed but withheld medical treatment, and for the anguish to next of kin, together with punitive damages, costs and attorney fees as permitted.

COUNT III
Plaintiff's v. Defendants First Correctional Medical, Gombeh-Ali &
Aramburo
PENDENTE STATE CLAIMS

31. Each of the foregoing allegations are incorporated herein as though fully set forth, and in addition thereto, Plaintiffs allege that First Correctional Medical had the right to control or overrule the authority of Defendant's Gombeh-Ali and Aramburo, Jr. to make referrals of inmate patients for diagnostic testing or studies or hospitalization, neither physician attempted to timely secure the required diagnostic procedures and clearly needed medical care for the decedent under circumstances where they had a clear duty to do so.

32. The independent failure of Defendants Gombeh-Ali and Aramburo, Jr. to diagnose and treat the decedent's HIV or Pneumocystis Carinii Pneumonia lead to his death and constitutes gross negligence and deliberate indifference to a serious medical need or, in the alternative, and falls well below the due standard of care.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants First Correctional Medical, Gombeh-Ali and Aramburo, Jr., jointly and severally for damages, and for punitive damages as a fact finder may determine, plus costs and attorney fees.

Respectfully submitted

/s/

Jeffrey K. Bartels
Kenneth William Richmond, *pro hac vice*
401 South Maryland Ave.
Wilmington, DE 19804
302-995-6211

C E R T I F I C A T I O N

Kenneth William Richmond, Counsel for the Plaintiff in the foregoing action certifies that he has investigated the facts underlying the allegations contained in the attached Complaint and that each of the allegations set forth are true and correct according to his best information and belief.

Dated January 27, 2007

/s/

Kenneth William Richmond
2019 Walnut Street
Philadelphia, PA 19103
215-523-9200

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <i>ESTATE of Ronald A. TROTMAN + CHARLOTTE WAITTE + Rolanda Trotman</i>	DEFENDANTS <i>FIRST Corrections / Medical Inc. et al.</i>								
(b) County of Residence of First Listed Plaintiff <i>Kent Co., DE</i> <small>(EXCEPT IN U.S. PLAINTIFF CASES)</small>	County of Residence of First Listed Defendant <i>Pima County, AZ</i> <small>(IN U.S. PLAINTIFF CASES ONLY)</small>								
<small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</small>									
(c) Attorney's (Firm Name, Address, and Telephone Number) <i>Jeffrey N. Bortek 401 South Maryland Ave Wilmington, DE 19804 302-995-6211</i>	Attorneys (If Known)								
II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <table border="0" style="width: 100%;"> <tr> <td style="width: 50px;"><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td style="width: 50px;"><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="checkbox"/> 2 U.S. Government Defendant</td> <td><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</td> </tr> </table>		<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)				
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)								
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)								
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table border="0" style="width: 100%;"> <tr> <td style="width: 50px;"><input type="checkbox"/> PTF Citizen of This State</td> <td style="width: 50px;"><input checked="" type="checkbox"/> DEF Incorporated or Principal Place of Business In This State</td> <td style="width: 50px;"><input type="checkbox"/> PTF Citizen of Another State</td> <td style="width: 50px;"><input type="checkbox"/> DEF Incorporated and Principal Place of Business In Another State</td> </tr> <tr> <td><input type="checkbox"/> 3 Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 4 Foreign Nation</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 6</td> </tr> </table>		<input type="checkbox"/> PTF Citizen of This State	<input checked="" type="checkbox"/> DEF Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF Citizen of Another State	<input type="checkbox"/> DEF Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 4 Foreign Nation	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 6
<input type="checkbox"/> PTF Citizen of This State	<input checked="" type="checkbox"/> DEF Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF Citizen of Another State	<input type="checkbox"/> DEF Incorporated and Principal Place of Business In Another State						
<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 4 Foreign Nation	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 6						

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input checked="" type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			FEDERAL TAX SUITS	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):				
		42 U.S.C. 1983				
		Brief description of cause:				
		U.S. Constitution, Amend VIII				

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <i>100,000.00</i>	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY		(See instructions): <i>Judge</i> DOCKET NUMBER <i>_____</i>				
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DATE <i>1/31/07</i>	SIGNATURE OF ATTORNEY OF RECORD <i>Jeffrey N. Bortek</i>				
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FOR OFFICE USE ONLY

RECEIPT # *_____* AMOUNT *_____* APPLYING JFP *_____* JUDGE *_____* MAG. JUDGE *_____*

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

07-62

Civil Action No. _____

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 5 COPIES OF AO FORM 85.

1/31/07

(Date forms issued)

Donald W. Richard

(Signature of Party or their Representative)

Donald W. Richard

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action